IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Mahesh Kumar Arora v. State of Rajasthan & Anr.

S.B.CIVIL WRIT PETITION NO.3921/1993
under Article 226 of the Constitution of India.

Date of Order : 2nd August, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. R.N.Upadhyay, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

The factual matrix as averred in the petition is that the petitioner while holding the post of Lower Division Clerk in the office of EER, Sub Division-II, Central Workshop Division, Bikaner was transferred to Sub Division Charanwala Branch-II, Indira Gandhi Nahar Pariyojna, Bhikampur (18th Division) in the month of September, 1979.

The petitioner tried to get his transfer cancelled but of no consequence. The petitioner did not join the duties after his transfer from Bikaner to Bhikampur, therefore, a memorandum dated 18.8.1992 under Rule 16 of the Rajasthan Civil Services

(Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as “the Rules of 1958”) was served upon him alleging therein that he remained absent unauthorisedly from duties w.e.f. 18.9.1979 to 15.10.1979 and then from 16.10.1979 to till the date of issuance of memorandum under Rule 16 of the Rules of 1958.

The petitioner submitted explanation for the misconduct alleged under memorandum referred above and the disciplinary authority after considering the same chose to appoint an inquiry officer to inquire into the allegations levelled against him.

The petitioner on asking by the inquiry officer in accordance to Rule 16(4)(A) of the Rules of 1958 on 20.10.1992 pleaded guilty to all the charges. The inquiry officer recorded the plea and obtained signature of the petitioner and return the finding by a communication dated 22.10.1992 to the disciplinary authority. The disciplinary authority under a communication dated 14.5.1993 sought comments from the petitioner on the findings recorded by the inquiry officer. A copy of the communication dated 22.10.1992 was also supplied to the petitioner. The petitioner did not choose to submit any explanation in pursuance to the notice dated 14.5.1993. The disciplinary authority accordingly after considering the plea of guilt recorded by inquiry officer passed the order

dated 23.6.1993 imposing a punishment of removal from service. Being aggrieved by the same present writ petition is preferred by the petitioner.

The contention of the counsel for the petitioner is that the order impugned dated 23.6.1993 was passed by the disciplinary authority without verifying the fact that no inquiry as required under Rule 16 of the Rules of 1958 was conducted by the inquiry officer. According to the counsel for the petitioner the inquiry officer wrongly recorded the guilt of the petitioner for alleged misconduct as he accepted the fact that he remained absent from duties for the period referred in the allegations but he never accepted that the said absence was wilful constituting a misconduct under the Rajasthan Civil Services (Conduct) Rules, 1971 or under Rule 86 of the Rajasthan Service Rules, 1951.

I have thoroughly examined the statement of guilt given by the petitioner on 20.10.1992 wherefrom it reveals that in quite unambiguous terms the petitioner confessed the guilty. The inquiry officer on 20.10.1992 at the first instance read allegations of charges before the petitioner and then the delinquent officer accepted the allegation No.1 and also accepted the facts stated in the allegation No.2. In view of it I do not find any force in the contention of the counsel for the petitioner that the

petitioner never accepted the guilt. The order sheet dated 20.10.1992 is quite clear and on basis of it the disciplinary authority rightly reached at the conclusion that the petitioner accepted his guilt.

The another aspect of the matter is that if the petitioner is having any grievance with regard to the guilt recorded by the inquiry officer he would have objected the same when a copy of the report dated 20.10.1992 was supplied to him under notice dated 14.5.1993. Then only inference which could be drawn by the non submission of any objection or explanation in response to the notice dated 14.5.1993 is that the petitioner accepted the guilt before the inquiry officer on 20.10.1992. Accordingly no error was committed by the disciplinary authority while accepting the finding of the inquiry officer to the effect that the petitioner accepted the charges levelled against him.

The another important aspect of the matter is that even according to the petitioner that after his transfer from Bikaner to Bhikampur he tried to get his transfer cancelled. He never joined duties at Bhikampur. He has further stated that he was suffering from mental ailment from 1985 to 1990. The explanation submitted by the petitioner for the period of absence from September, 1979 to 1985 is that during this period he was undergoing treatment at Fazilka in State

of Punjab. The petitioner also placed on record certain documents in support of his contention. The documents produced by the petitioner along with this writ petition to substantiate the contention that he was suffering from mental ailment and was undergoing treatment in Fazilka (Punjab) on face are not trustworthy.

The certificate issued by one Dr.Mohanlal Sukhya, registered Medical Practitioner, Fazilka is placed on record by the petitioner which mentions that he was suffering from mental depression and he was under treatment of the said doctor. An another certificate is placed on record by the petitioner is issued by one Dr.Kewal Krishna stating therein that the petitioner was suffering from mental illness and he was under his treatment. The third certificate issued by one Shri Darbar Singh that too relates to the treatment of the petitioner by him for mental illness. I am having all doubts about genuineness about those certificates, however, without entering into that controversy it is pertinent to note that not a single certificate mentions that the petitioner's position was so deteriorative that he was not in a position to attend the office. The conduct of the petitioner in totality shows that after being transferred from Bikaner to Bhikampur he was not at all interested in joining the services. The period of absence of the petitioner is of about 13 years, such

prolong absence destinates to only one conclusion that the petitioner abandoned the service.

Hon'ble Supreme Court in the case of Shahoordul Haque v. The Registrar, Cooperative Societies, Bihar and another, AIR 1974 SC 1896, for such a long delay observed as under:-

> "The undenied and undeniable fact that the appellant had actually abandoned his post or duty for an acceedingly long period, without sufficient ground for his absence, is so glaring that giving him further opportunity to disprove what he practically admits, could serve no useful purpose. It could not benefit him or make any difference to the order which could be and has been passed against him.... On the view we have adopted on the facts of this case, it is not necessary to consider the further question whether any notice for termination of service was necessary or duly given on the assumption that he was not punished. We do not think that there is any question involved in this case which could justify an interference by us...."

The case of the petitioner squarely falls within the four corners of observations made by Hon'ble Supreme Court in the case referred above. The petitioner was never interested to serve the respondents, no effort appears to have been made by

him in the period of 13 years to resume duty. A civil servant is required to act with all honesty, integrity and dedication. The tendency to take the government service in most casual manner is giving bad name to governmental functioning, which is creating a feeling in people at large that the government services are meant only to draw money from public exchequer. In the present case the petitioner remained absent from service for about a period of 13 years on being transferred from Bikaner to Bhikampur. He never cared to join duties at the place he was transferred, this fact alone is sufficient to establish the petitioner's degree of detachment towards service. This Court while exercising powers under Article 226 of the Constitution of India is not required to come forward for rescue of person whose conduct is against the functioning of public office and who is not having requisite dedication for public service.

In view of whatever discussed above this petition for writ is devoid of merit, the same, therefore, is dismissed.

(GOVIND MATHUR),J.

kkm/ps.